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# In the Supreme Court of the United States

OCTOBER TERM, 1987

ROBERT E. BADHAM, et al.,

*Appellants,*

*vs.*

MARCH FONG EU, et al.,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

## MOTION OF THE MEMBERS OF THE CALIFORNIA DEMOCRATIC CONGRESSIONAL DELEGATION TO DISMISS OR AFFIRM

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### I.
### INTRODUCTION

Before this Court reversed the trial court judgment in *Davis v. Bandemer*, 478 U.S. 109 (1986), the Appellant California Republicans (the "California Republicans") told this Court that Indiana's redistricting was "remarkably similar to this case" and that the parallels between the two cases were "striking."[1] Whatever claims the California Republicans may now make about the meaning of *Bandemer*, they cannot deny that a 7—2 majority of this Court found that the facts established in that case lacked constitutional significance. Thus, at a bare minimum, the California Republicans would have

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[1] Republican's Petition for Writ of Certiorari at 6 n.5, 23, *Badham v. Secretary of State of California*, 470 U.S. 1084 (1985) (No. 84-1226) (hereinafter "Reps. Cert. Pet. in No. 84-1226").

had to have alleged materially more than what the Indiana Democrats proved.

But as the chart in Section III of this brief demonstrates, they have not done so. Instead, true to their claim of "striking" similarities, the California Republicans have alleged, at best, a mirror image of *Bandemer*, down to the smallest details. This case, then, involves a routine and inevitable application of *Davis v. Bandemer*. On this ground alone, once a judgment is entered below, it should be summarily affirmed or, in the alternative, the appeal should be dismissed for want of a substantial federal question.

But there are other grounds. There is no constitutional theory that would impose lesser pleading burdens on partisan groups than on racial groups. This Court's precedents — *Rogers v. Lodge*, *White v. Register*, *Whitcomb v. Chavis* and *Mobile v. Bolden* — set a high standard that minority plaintiffs must meet in order to prove a constitutional violation. In each of those cases, the affected racial minority comprised a substantial percentage of the population, but had elected no, or virtually no, representatives ever. That was not enough, however, to make out a constitutional violation. This Court required, in addition, "strong indicia" of lack of political power and an examination of the political process "as a whole." The *Bandemer* plurality reaffirmed the Court's long-standing "conviction" that "the power to influence the political process is not limited to winning elections." 106 S. Ct. 2797, 2810. Because of the "peculiar characteristics" of partisan gerrymandering cases, it erected a threshold pleading requirement unique to partisan cases and acknowledged that the standards for a partisan gerrymandering case "may be more difficult" to prove even than those in the racial gerrymandering cases. *Id.* at 2810 n.12.

The California Republicans would turn this approach on its head. What they alleged does not begin to approach

what was proven in *Rogers v. Lodge* and *White v. Register* — or even in *Mobile v. Bolden* and *Whitcomb v. Chavis*, where the plaintiffs lost. As the district court observed, the Republicans alleged *no* indicia, strong or otherwise, concerning lack of political power and presented no allegations of effects that went beyond the results of congressional elections. Even there, the Complaint admitted that Republicans control fully 40% of California's delegation to Congress, which was almost exactly the Republican's proportional share of registered voters in the state at the time of the two elections under A.B. 2X. The only "degradation" that the Complaint alleged was that the Republicans control three, four or five[2] fewer seats in the House of Representatives than they would have had with a different *kind* of proportional representation — proportionality between the number of votes cast for Republican candidates in forty-five different California congressional races and the percentage of seats won by Republican candidates. This kind of *de minimis* departure from seats/votes proportionality, which occured even under the redistricting plan endorsed by the Complaint,[3] can constitute an unconstitutional effect only if political parties merit greater protection than racial minorities and only if the Constitution requires proportional representation of a particular variety.

And there is more. While the California Republicans' Complaint does mirror the defective proof in *Bandemer*, it also reveals a markedly weaker justification for judicial intervention than did the Indiana case. Unlike Indiana, California does not give its Legislature and Governor ultimate political power. That power is instead held at large by the electorate, which can block bills from becoming law through the referendum, and can enact

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[2] *See, infra*, at n.18.

[3] *See, infra*, at n.18.

laws directly through the initiative. Only the electorate can change the constitution. No serious analysis of the process that leads to the enactment of California laws, like the redistricting law at issue, can ignore these political facts of life.

The political process that led to the challenged elections was one in which the Republicans initially participated with what they term "overwhelming" success. Indeed, it was Appellant Assemblyman Robert Naylor who laid down the rules of the process in an "anti-gerrymandering" constitutional amendment he authored, promoted and presented to the electorate in 1980. And it was the Republican National Committee, aided by Presidents Reagan and Ford, that used the referendum to defeat the Legislature's first redistricting plan, A.B. 301. Despite these important victories, the Republicans later absented themselves from the process, both by foregoing a referendum against A.B. 2X and by abandoning the power they had won in amending the constitution. They elected instead to pursue political power through a decree from the federal judiciary, and insisted that the courts could not consider the political power they had won and then abandoned. There is no parallel to this history in *Bandemer*, or indeed in the entire annals of federal redistricting litigation. Never before has a group with so much proven power relinquished so much of it, only later to claim that the Constitution and the federal courts must restore it to its rightful political position.

This case presents a result compelled by earlier cases and a singularly inappropriate occasion for making new law. The allegations below provide no basis for further prolonging these tortuous proceedings. In *Bandemer*, seven members of this Court expressed serious concerns about burdening the federal courts with regulation of "the most political of legislative functions." Absent the pleading threshold wisely imposed in *Bandemer*, the

federal court below would have become the first in history to pass judgment on whether members of a coordinate branch of government were properly representing their constituents.[4] Justice O'Connor's opinion warned of a "gradual evolution" into a requirement of essentially proportional representation. The plurality and dissent were confident that the courts could successfully resist any such evolution. This case presents the issue in stark relief.

A victory for California Republicans, where Indiana Democrats and racial minorities have failed, would signal that the federal courts are about to enter "a vast wonderland of judicial review of political activity." *Rogers v. Lodge*, 458 U.S. 613, 649-50 (1982) (Stevens, J., dissenting). It would tell the two most powerful political parties in the free world that where they fail to exercise their own considerable power, they may later rely upon the federal courts to redistribute partisan political power. It would confirm that a threatened "gradual evolution" into proportional representation has suddenly come to fruition and that an exact and particular form of proportional representation is to be the standard. In short, it would confirm Professor Schuck's recent conclusion about *Bandemer* that "*this* time, the Cassandras are correct." Schuck, *The Thickest Thicket: Partisan Gerrymandering and Judicial Regulation of Politics*, 87 Colum. L. Rev. 1325, 1384 (1987).

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[4] This prospect is not imaginary. The *Bandemer* plurality requires "actual proof" that a representative is failing to represent plaintiffs' interests. *Bandemer*, 106 S.Ct. at 2810. When the district court stayed proceedings pending *Bandemer*, the Republicans had obtained subpoenas commanding six sitting Democratic members of the United States Congress to submit to depositions at the headquarters of the Republican National Committee.

## II.
## STATEMENT OF THE CASE

Politics in California is played out in two distinct arenas. First, there is the Legislature, composed of representatives from 120 single-member districts. Like most legislatures, it makes laws, subject to the governor's veto. Second is California's "ultimate" political power, which resides at large in the hands of the electorate. This direct electoral power is the legacy of Hiram Johnson's Progressive Movement, which was deeply suspicious of politicians and the putative legitimacy of their majorities. Article II of the California Constitution gives Californians direct power to veto bills of which they do not approve, by referendum, or to enact laws and constitutional amendments directly, by initiative. No change can be made to the California Constitution without a popular vote. Cal. Const. Art. XVIII.

On the eve of the 1980's redistricting in California, Appellant Republican Assemblyman Robert Naylor authored a proposal to add certain substantive criteria on redistricting to the California Constitution. In the official ballot argument, the proposal was described by Assemblyman Naylor as a bar against gerrymandering: "From past experience, we know what could happen with next year's reapportionment .... [This amendment] will block forces in the Legislature from gaining unfair dominance by one political party or insuring reelection for particular incumbents." Assemblyman Naylor's amendment was approved by the voters in the June 1980 primary election, and became Article XXI of the California Constitution. Redistricting after the 1980 census was accordingly governed by Article XXI.

In September 1982, the California Legislature passed a bill, entitled A.B. 301, that established 45 equipopulous congressional districts. Complaint, ¶9. The California Republican Party and the Republican National Commit-

tee promptly claimed that A.B. 301 was a partisan gerrymander. Having been defeated in the legislative arena, they turned to the referendum process and launched a referendum petition against A.B. 301. Complaint, ¶11. The petition campaign featured an eloquent written plea from President Reagan that was, according to the Republicans, mailed to 3.5 million voters. The campaign succeeded in collecting enough signatures to put A.B. 301 to a referendum vote in the June 1982 primary. Under the provisions of the California Constitution, the successful qualification of the referendum vote barred A.B. 301 from taking effect as a law. *Assembly v. Deukmejian*, 30 Cal. 3d 638, 656-57, *appeal dismissed and cert. denied sub nom. Republican National Committee v. Burton*, 456 U.S. 941 (1982).

With A.B. 301 suspended by the Republicans, and with no other set of equipopulous districts available, the California Supreme Court was faced with the task of selecting a set of districts for use in the imminent 1982 elections. A unanimous[5] California Supreme Court ordered that the A.B. 301 districts be used for the 1982 elections. *Id.*

The referendum was put to a vote in the June 1982 primary, supported by a ballot argument by former President Ford. In what the Republicans have described as an "overwhelming" victory, A.B. 301 was barred from any future legal use. Complaint, ¶11. In addition, pursuant to Article II, Section 9 of the California Constitution, the Legislature was barred from ever enacting a future reapportionment plan that was not "essentially different" from A.B. 301. *Id.* at 678.

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[5] The Jurisdictional Statement claims that the court was "divided" on this point. It was not. The court voted 7-0 to use the A.B. 301 congressional districts on a temporary basis, but 4-3 to use the state legislative districts that were also the object of referenda.

In the November 1982 general election, Republicans won seats proportional to their share of the two-party registration, as reflected in the 1982 California Statement of Registration. The Republicans regained control of the Governor's office by electing George Deukmejian, but lost every other statewide constitutional office. Complaint, ¶12; Official Statement of Vote 1982.

With the 1982 elections concluded, an intense partisan battle shaped up over the districts to be used in 1984. Buoyed by their successful referendum efforts, the Republicans threatened to overturn any new redistricting plan that failed to satisfy their demands. When A.B. 2X was enacted in December 1982, the Republicans promptly declared their opposition and proclaimed, "There will be a referendum." Juris. Stat. at 66a, 60a. Yet, instead of blocking the bill with a referendum petition, the Republicans sat by as the bill became law.

On March 4, 1983, the Republicans filed a complaint in the district court, alleging that A.B. 2X violated several provisions of the California Constitution. Building on their referendum victory, they claimed that A.B. 2X essentially reenacted A.B. 301 in violation of Article II, Section 9 of the California Constitution. Using the provisions of Article XXI that Assemblyman Naylor had authored, they alleged that A.B. 2X illegally created discontiguous districts and split too many cities and counties. They also alleged procedural improprieties and that the Secretary of State's post-enactment corrections were a nullity under state law. This flurry of state constitutional claims was joined to a federal claim of population inequality and a claim of partisan gerrymandering. *Badham v. Eu*, 568 F.Supp. 156, 159 (N.D. Cal. 1983), *aff'd*, 721 F.2d 1170 (9th Cir. 1984).

Because of the primacy of the state constitutional claims, a unanimous district court entered an order on June 20, 1983, abstaining from deciding any federal constitutional claims until the Republicans' state claims

were adjudicated. In a memorandum opinion, the court observed: "If A.B. 2X is found invalid because it violates the California Constitution . . . , the federal constitutional questions will become moot." *Id.*

The Republicans sought a writ of mandamus against the abstention order, principally on the basis that litigation in the state courts entailed "intolerable delays." In the meantime, they attempted to delay the state court proceedings. After acceding to the Republicans' demand for expedited treatment of their challenge, a unanimous Ninth Circuit panel rejected the Republicans' challenge to the abstention order. In an opinion by Judge Wallace, the court unanimously affirmed the abstention order "[e]ssentially for the reasons stated by the district court." 721 F.2d 1170, 1172. It did not resolve questions about the Republicans' delaying maneuvers in state court, but stated that "the district court must examine any allegations that the Republicans have not acted in good faith, especially during the period following its abstention order." *Id.* at 1174.

On December 12, 1983, the Republicans filed a motion for preliminary injunction against the use of A.B. 2X in the 1984 elections. The motion was filed just three days before the deadline the Republicans themselves had alleged for any new districting. In their papers, the Republicans admitted that it was already too late to use a new plan in the 1984 elections. Reps. Cert. Pet. in No. 84-1226 at 14a. The district court declined to lift its abstention order. The court found that the Republicans "ha[d] not made a good faith effort to obtain the a disposition of the state law issues in state court." *Id.* Rather, they had "actively delayed" the state court action. *Id.* at 12a.

Again, the Republicans filed a writ of mandamus in the Ninth Circuit. Again, their arguments were given expedited consideration. On November 1, 1984, the Ninth Circuit affirmed the district court's continued abstention.

*Badham v. Eu*, 749 F.2d 36 (9th Cir. 1984) (mem.), *cert. denied*, 470 U.S. 1084 (1985)(mem.). It stated, "We are not satisfied that the Republicans have effectively pursued their claim in state court. . . ." Reps. Cert. Pet. in 84-1226 at 2a. On January 30, 1985, the Republicans petitioned this Court for review of the Ninth Circuit opinion. Certiorari was denied. 470 U.S. 1084 (1985) (mem.).

In the 1984 elections, the first held under A.B. 2X,[6] the Republicans gained one seat, as Democratic incumbent Patterson lost to Republican conservative Robert Dornan. No Republican incumbents were defeated. Again, the parties' respective share of seats mirrored the most current registration data.

On January 15, 1985, the Republicans finally filed an "at-issue memorandum" in the state court proceedings concerning A.B. 2X.[7] On January 18, 1985, they moved for an early trial date. The motion was granted, and trial was set for May 8, 1985.

On the eve of trial, having argued for almost two years that the state courts were too slow, the Republicans reversed course and abandoned their state law claims forever. The Republicans surrendered any claim that A.B. 2X conflicted with their referendum victory, or that it conflicted with the "anti-gerrymandering" provisions of Article XXI. As the Republicans' counsel put it: "The compliance or non-compliance with state law will not be raised as an issue by the plaintiffs in this or in any other litigation." Transcript of June 20, 1985 hearing, 5-6.

By that time, this Court had *Bandemer* squarely before it. Given the uncertain state of the law governing

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[6] Contrary to the Republicans' suggestions, there have been two, not three elections under A.B. 2X. *See* Section V.A., *infra*.

[7] An at-issue memorandum is the key pleading that triggers trial setting in California. Cal. Rules of Court 209, 210, 217.

justiciability, the district court stayed all proceedings in the case pending the issuance of this Court's opinion in *Bandemer*. After *Bandemer* issued, the district court held a status conference on September 19, 1986, at which it instructed the Republicans to file their "best effort" at pleading a case under *Bandemer*.

In the November, 1986 California congressional elections, the parties retained their respective shares of seats, again mirroring current official registration, despite significant Democratic gains nationally. In statewide elections, the Republicans retained the governorship, while Democrats won each of the five other statewide constitutional offices. Juris. Stat. at 200a.

The district court held a lengthy hearing on the Delegation's motion to dismiss on December 5, 1986. On January 13, 1987, the Republicans filed a final amendment to their Complaint, adding all the Republican congressional incumbents, and others, as plaintiffs. The Republicans declined the district court's repeated invitations to add to the substance of the Complaint. Juris. Stat. at 16a n.5.[8]

On April 21, 1988, the district court filed its opinion dismissing the Complaint. The district court rejected the Delegation's argument that partisan gerrymandering claims involving the United States Congress raised separation of powers concerns that rendered such claims non-justiciable. Juris. Stat. at 7a-8a. The opinion then painstakingly followed the analytic outline set forth in the *Bandemer* plurality, which stressed the importance of the special pleading threshold for partisan gerrymandering

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[8] The Republicans now claim that they could have added to the Complaint, but chose not to because they expected the district court to rule against them regardless. Juris. Stat. at 20 n.10 and 16. The Delegation knows of no rule that frees a litigant from the obligation to plead its best case if it feels the district court has already unfairly made up its mind.

claims. *Bandemer*, 106 S.Ct. at 2816. It accepted the Republicans' allegations of partisan intent for the purposes of its review (Juris. Stat. at 11a) and concentrated on the key "effects" allegations. Juris. Stat. at 8a-14a. It noted the Republicans' central allegations of disproportional results. Juris. Stat. at 12a. It looked, then, for the other "indicia" the plurality required — indicia of lack of political power. It also looked for any allegations that the electoral system "as a whole" degraded the Republicans' influence. *Bandemer*, 106 S.Ct. at 2810; Juris. Stat. at 10a, 12a. It did not find any such allegations, other than in conclusory terms. Nor did it find any allegations that Republican interests were being ignored by the congressional delegation, which was concededly composed 40% of Republicans. On the basis of this review, which was limited to the four corners of the Complaint, the court found the allegations to fail the *Bandemer* effects threshold.[9]

A dissenting opinion from Judge Schnacke was to be filed "in due course." No judgment has yet been entered in the case.

## III.
## THE RESULT IN BANDEMER COMPELLED THE RESULT BELOW

For years, the California Republicans have compared their claims to those of the Indiana Democrats and found

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[9] The Delegation disagrees with the Republicans' strained reading of the opinion. *See* Section IV, *infra*. The Delegation also disagrees with the Assembly that the opinion in any way adopted the broad reading of *Bandemer* set forth in the first page of the Assembly's brief. The opinion is instead a modest, systematic application of the pleading inquiry that the *Bandemer* plurality required it to make. The district court rightly abstained from any attempt to prognosticate under what circumstances different political groups may succeed under *Bandemer*.

the similarities "striking." The Republicans were right. This Court's rejection of the Indiana Democrats' claim compelled the district court's dismissal of the California Republicans' Complaint.

### A. The California Republicans' Complaint Is, At Best, A Mirror Image Of The Facts That This Court Found Constitutionally Irrelevant In Davis v. Bandemer

As did the Democrats in *Bandemer*, the Republicans allege (1) malevolent intent or "partisan lust"[10] (2) a decidedly partisan enactment process, (3) a gross lack of respect for traditional "good government" criteria, (4) "bizarre" and misshapen districts, and, by way of effect, (5) a deviation from exact proportionality between the percentage of seats they won and percentage of votes cast state-wide for candidates of their party. The following chart lines up the allegations from California and the constitutionally inadequate proof from Indiana:

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[10] The speaker of Indiana's house boldly stated the partisan motivation of the Indiana plan. There has been no such admission in this case, and not a single disputed fact has been adjudicated. While this brief accepts as true those allegations of the Complaint that must be so treated in reviewing a dismissal order, there should be no misunderstanding that the Delegation vigorously disputes almost all of the operative allegations. The Delegations' concern on this point is heightened by the fact that one member of this Court seems, in passing, already to have accepted much of the Republicans' claim. *See Rogers v. Lodge*, 458 U.S. 613, 649 (1982) (Stevens, J., dissenting).

| | CALIFORNIA REPUBLICANS' CLAIMS (Cites To Complaint) | | INDIANA DEMOCRATS' FACTS (Cites To *Bandemer*) |
|---|---|---|---|
| 1. | Republicans invalidate plan with referendum. ¶11. | 1. | [No parallel facts.] |
| 2. | Governorship originally controlled by Democrats, ¶19. now by Republicans. ¶12. | 2. | Governorship controlled by Republicans. p. 2800. |
| 3. | Democrats control both houses of state legislature. ¶14. | 3. | Republicans control both houses of state legislature. p. 2800. |
| 4. | Republicans excluded from legislative aspect of redistricting process. ¶¶ 12, 16. | 4. | Democrats excluded from redistricting process. p. 2802 n.5; p. 2833. |
| 5. | Vehicle bill used; reapportionment plan tacked on. ¶¶ 12, 13 | 5. | Vehicle bill used; reapportionment plan tacked on. p. 2801, 2833. |
| 6. | No public hearings held. ¶16. | 6. | No public hearings held. p. 2833. |
| 7. | Bill (A.B. 2X) adopted on last day of session. ¶13. | 7. | Bill adopted on last day of session. p. 2833. |
| 8. | Bill adopted on strict party lines in both houses. ¶14. | 8. | Bill adopted on strict party lines in both houses. p. 2833. |
| 9. | Bill adopted hastily. ¶17. | 9. | Bill adopted hastily. p. 2833. |
| 10. | Corrections made as a result of haste; made by legislative staff. ¶¶17-18. | 10. | Corrections made as a result of haste; made by legislature. p. 2833. n.5. |
| 11. | Legislature's "paramount" concern was partisan. ¶26. | 11. | Republicans motivated "solely" by partisan objectives. p. 2802 n.5, p. 2834. |
| 12. | Districts depart from "objective" criteria. ¶22. | 12. | Districts "conspicuously ignore" traditional criteria. p. 2802, p. 2833. |
| 13. | Districts have "bizarre" shapes. ¶22. | 13. | Districts have "strange" shapes. p. 2833. |
| 14. | Districts ignore communities of interest. ¶22. | 14. | Map makers gave "no consideration to communities of interest." p. 2834. |

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| 15. Districts divide cities and counties for partisan ends; examples. ¶23. | 15. Map makers "carved up" counties, cities and even townships for partisan reasons; examples. p. 2833. |
| 16. "Bizarre" shapes will adversely affect voter participation and make it more difficult to challenge incumbents. Irregular shapes of districts cause voter confusion. ¶24. | 16. Strange shapes have "potential for voter disillusion and non-participation." p. 2833. Voter confusion generated by irrational district boundaries is "exacerbated." p. 2834. |
| 17. Districts are made "uncompetitive;" almost all are safely Democratic or Republican; too many are Democratic. ¶¶26, 28. [Republicans admit that 6 of 45 seats in A. B. 2X are not "safe seats".] | 7. Republicans admitted plan was designed to make 56 safe Republican districts and 30 safe "Democratic" seats. Only 14 out of 100 competitive. p. 2834. |
| 18. Districts are "one of the most, if not the most egregious and effective gerrymanders of the 1980's." ¶20. | 18. [California Republicans' *amicus* brief on side of Indiana Democrats terms Indiana gerrymander "egregious"]. |
| 19. Districts produced disproportional results on seats/votes analysis; Republicans got 40% of seats, but 50% of votes summed over 45 races. (10% gap). ¶¶20, 26. In 1986 election, gap narrowed to 7%. | 19. Districts produced disproportional results. Democrats got 43% of seats but 52% of house vote summed over 100 races. (9% gap). Disproportionality much larger in at-large districts. (32% gap) p. 2801. |
| 20. Democrats "artfully" used all "acknowledged" gerrymander techniques and did not treat incumbents equally, but no at-large districts used. ¶¶20, 21. [These allegations inaccurately refer to A.B. 2X; A.B. 2X only unseated one incumbent, a Democrat. *See* Section V.A., *infra*.] | 20. Republicans "stacked" and "packed" Democrats and used at-large districts, resulting in Democrats receiving only 14% of the seats for 46% of the vote in Marion County. (32% gap). No discussion of incumbents' rights. p. 2801. |

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|---|---|
| 21. In first election under A.B. 2X, *Republicans* gained one seat; *Democrats* lost one, but "circumstances there were unique." ¶26. | 21. [no parallel facts] |
| 22. Disproportionality "can be predicted to persist" in next two elections; California's delegation to the United States Congress is "virtually" immutable and will change "little" until next redistricting. ¶27. | 22. Republicans intended to deprive Democrats of fair opportunity to win control of legislature "at least" until 1991 [Justice Powell's view of what record "unequivocally demonstrates."] p. 2834. |
| 23. [No parallel allegations; California congressional delegation includes four Blacks, three Hispanics, and two Asians.] | 23. Districts disadvantaged black voters in particularly "hard and harsh" manner. *Bandemer v. Davis*, 603 F.Supp. 1479, 1488 (S.D. Ind. 1984). |

### B. The California Republicans' Allegations Present An Even Poorer Justification For Judicial Intervention.

The Delegation respectfully suggests that these similarities are indeed striking and that, on that ground alone, this case does not merit this Court's plenary consideration. In fact, however, the California Republicans' case is a markedly poorer candidate for judicial intervention. The relative weakness of the California Republicans' claim has five predominant features.

*First*, the California Republicans had access to, and effectively utilized, aspects of the political process that did not even exist in Indiana — the referendum and the successful submission of proposed constitutional amendments to the electorate. These both played a key role in the process that led to the establishment of the challenged districts and to the election results at issue.[11] Appellant

[11] Even the Republicans concede that an assessment of their

Robert Naylor authored and sponsored a constitutional amendment in 1980 that enacted substantive redistricting standards which became Article XXI of the California Constitution. He stated that Article XXI would "block forces in the Legislature from gaining unfair dominance by one political party or ensuring reelection for particular incumbents." The Republicans also skillfully used the referendum process to prevent the 1982 redistricting bill, A.B. 301, from becoming law. Their later and unexplained compromise of their power to affect the congressional election process was threefold: (1) they failed even to attempt a referendum against A.B. 2X, despite their "overwhelming" success against A.B. 301; (2) they abandoned their attempts to enforce Article XXI; and (3) they abandoned their claim under the California Constitution that A.B. 2X impermissibly re-enacted A.B. 301. Whatever may be said of the Indiana Democrats' plight, there was certainly no showing that they had relinquished the very power of which they later complained to have been deprived.

*Second*, where the California Republicans were attempting to challenge a single delegation of representatives to Congress, the Indiana Democrats challenge was to the composition of an entire state legislature. The district court in *Bandemer* found control of the Indiana legislature to be "crucial," especially in view of the fact that the governor was a member of the same party that controlled the legislature. *Bandemer v. Davis*, 603 F.Supp. 1479, 1483 (S.D. Ind. 1984). In this case, the Republicans complained about three, four or five seats in one of fifty

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political position must include "the political process directly involving or resulting in election to . . . Congress and congressional districts." Juris. Stat. at 12. In California, that process rather clearly includes both the partisan battles fought in the Legislature, as well as those that are played out in the direct political processes controlled by the electorate.

delegations to a national legislature of 435 members. The California delegation to Congress is incapable of making laws and "control" of it has at best an attenuated effect on control of the entire House of Representatives. Even the House itself passes bills subject to Senate approval and under the ultimate veto control of a Republican President.

*Third*, the California Republicans alleged that they would retain "only" 40% of the congressional seats in 1988 and 1990, but could not begin to prognosticate further. State legislatures, unlike Congress, draw the very districts in which their members will run and can theoretically "lock in" results decade after decade. Congress does not enjoy a parallel power; its members' seats are drawn by state legislatures elected from an entirely different set of districts.

*Fourth*, Indiana Democrats were victims of at-large districts that effectively cancelled out their voting strength in Marion County. This Court has repeatedly recognized the special threat posed by at-large districts and the "more politically fair" results that inhere in single-member districts. Recognizing the problem, Congress banned at-large congressional elections in 1967. 2 U.S.C. §2c. *See* Section IV, *infra*.

Fifth, as the Assembly's brief makes clear, the California Republicans have in fact achieved "sustained success" and representation proportional to their share of the two-party official registration at the time of each of the elections in question; no such proof existed in *Bandemer*. While proportional representation is clearly not a constitutional mandate, "persistent proportional representation is inconsistent with [a vote dilution claim]." *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 2780 (1986).

Now that the *Bandemer* trial court has been reversed, the California Republicans assert that "[t]he record in

*Bandemer* appears positively ectomorphic when contrasted with the serious discriminatory efforts of A.B. 2X." Juris. Stat. at 17. The Delegation defers to the Court's assessment of the respective physiques of *Bandemer's* facts and *Badham*'s allegations.

## IV.
## THE CONSTITUTIONAL INADEQUACY OF THE INDIANA DEMOCRATS' AND CALIFORNIA REPUBLICANS' CLAIMS FOLLOWS FROM THIS COURT'S RACIAL GERRYMANDERING CASES

Much of the California Republicans' argument is devoted to hyperbolic or facetious characterizations of the district court's opinion. They state that the district court "concluded that Appellants' right to fair and effective representation in Congress is irrelevant," Juris. Stat. at 12, and that the district court's rationale means that "the equal protection clause no longer protects black voters" because of "the political success of Mayor Thomas Bradley in Los Angeles." Juris. Stat. at 13.[12] In an apparently more serious vein, the California Republicans complain that the district court placed undue emphasis on the following statement from *Bandemer*:

> [U]nconstitutional discrimination occurs only where the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence in the political process as a whole.

Juris. Stat. at 11, quoting *Bandemer*, 106 S.Ct. at 2810.

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[12] These tendentious characterizations of the district court's opinion are particularly hard to square with the opinion's clear statement that the undisputed facts of which it took judicial notice were "merely . . . additional support for the court's ruling" concerning the utility of further amendments. Juris. Stat. at 18a n.6.

But emphasis on this point is hardly undue, and the California Republicans' discomfort with it is instructive. The statement simply reflects the essence of this Court's racial gerrymandering cases, which focus not just on the outcome of elections and a failure of proportional representation (or in most cases, the total absence of minority representatives), but rather on the ability of the complaining minority group to have an impact on the political process generally. Any fair-minded view of *Rogers v. Lodge*, *Mobile v. Bolden*, *White v. Regester*, and *Whitcomb v. Chavis* bears this out.[13] That the standard is not an easy one for a plaintiff to meet is evidenced by the scarcity of cases in which plaintiffs have prevailed under the equal protection clause. Indeed, by 1980, "[i]n only one case ha[d] the Court sustained a claim that multi-member legislative districts unconstitutionally diluted the voting strength of a discrete group." *Mobile v. Bolden*, 446 U.S. 55, 68 (1980). In the years since then, the Court has only sustained one other such claim. In *Bandemer*, the Court noted that it has never struck down a single-member district plan. *Bandemer*, 106 S.Ct. at 2803.

The pernicious effects of at-large elections were well described in *Rogers v. Lodge*, 458 U.S. 613 (1982),

> At-large voting schemes and multi-member districts tend to minimize the voting strength of minority groups by permitting the political majority to elect *all* representatives of the district. A distinct minority

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[13] It is surely telling that the California Republicans characterize these cases as "extreme." Juris. Stat. at 14. We agree that the political degradation established in those cases was extreme; it certainly makes the California Republicans' or Indiana Democrats' supposed predicament look like the political promised land. But the Republicans apparently failed to recognize that, despite the extremity of the plaintiffs' situation, the plaintiffs did not prevail in *Whitcomb v. Chavis* or *Mobile v. Bolden*. Where these plaintiffs failed, what rule of law should help Indiana Democrats or California Republicans prevail?

> . . . may be unable to elect any representatives in an at-large election, yet may be able to select several representatives if the political unit is divided into single-member districts.

*Id.* at 616 (emphasis in original). The "essence" of single-member districts is to produce "a more 'politically fair'-result than would be reached with elections at large, in which the winning party would take 100% of the legislative seats." *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973). The unique effectiveness of at-large districts can be seen in *Bandemer*, where Indiana Republicans used a combination of at-large and single-member districts in Marion County to give Democrats just 3 of 21 seats for 46% of the vote. *Bandemer*, 106 S.Ct. at 2801. No electoral effects alleged in this case even begin to approach this level.

The racial gerrymandering cases provide striking and specific evidence, not only of the dangers of at-large elections, but also of the level of adverse political effects that have been presented to this Court in its rare ventures into this part of the political thicket. In *Rogers v. Lodge*, 458 U.S. 613 (1982), the at-large system, combined with a history of social and political oppression, had made it possible for the white *minority* of Burke County, Georgia to prevent the "substantial" black majority ever from electing one of its members to local political office. Elected officials were completely unresponsive to the Black community, and ignored its interests.

Similarly, in *Mobile v. Bolden*, 446 U.S. 55 (1980), no Black representative had ever been elected, despite the fact that Blacks constituted more than 35 % of the population. Moreover, it was "highly unlikely that any time in the foreseeable future, under the at-large system, . . . a black candidate can be elected. . ." *Id.* at 98 (citation omitted). Blacks had been subjected to "massive" official discrimination that had been shown to undermine Black political participation. *Id.* at 97.

In one of the Court's earliest racial gerrymandering cases, *White v. Regester*, 412 U.S. 755 (1973), the offending at-large electoral system had elected only two Blacks and seven Hispanics since 1880. *Id.* 766, 768-69. The utter failure of the Black community's white representatives to respond to Black interests was exemplified by the fact that they had actually *led* the segregation fight in the 1950's. *Id.* at 767. The remedy was imposition of single-member districts.

In their plea for judicial intervention, the Republicans have claimed that A.B. 2X is a "gerrymander of historic proportions."[14] If indeed California has made gerrymandering history, where in the history of racial gerrymandering is there a case where Blacks won proportional representation in single-member districts, proved an ability to defeat redistricting statutes they opposed, amended the state constitution to bar racial gerrymandering, elected the governor and other powerful officials, failed to prove any interference with their exercise of the franchise or with any other aspect of their political life and yet persuaded a federal court that the Constitution required it to intervene on their behalf? The California Republicans' understanding of history and of the Equal Protection Clause presupposes a separate, privileged position for Democrats and Republicans in gerrymandering cases.

## V.
## THE CALIFORNIA REPUBLICANS' PROPOSED EFFECTS ALLEGATIONS FAIL TO SATISFY THEIR PLEADING BURDEN

The foregoing precedents make it clear that the proper constitutional inquiry cannot center merely on the present or imagined future results in a challenged set of

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[14] Reps. Cert. Pet. in No. 84-1226 at 10.

districts, or even on the win-loss column for elections generally. The inquiry instead must embrace the *entire* political process, and whether the complaining group plays a seriously degraded role in it:

> [*A*] *group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that make winning elections more difficult* . . . [U]nconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a gorup of voters' influence on *the political process as a whole.*

*Bandemer*, 106 S.Ct. at 2810 (emphasis added). Thus:

> [W]e have found equal protection violations only where a history of disproportionate results appeared *in conjunction with strong indicia of lack of political power* and the denial of fair representation. . . . [E]qual protection violations may be found *only where a history . . . of disproportionate results appears in conjunction with similar indicia.*

*Id.* at 2814 (emphasis added, citations omitted).

The California Republicans attempt to narrow *Bandemer* by suggesting that the Indiana Democrats' only failing was that they provided effects relating to a single election. Juris. Stat. at 18-19. But what the plurality actually said was:

> We have simply determined that aside from the election results, *none* of the facts found by the district court were relevant to the question of discriminatory effects . . . [and] that *no* constitutional discriminating effects were shown *as a matter of law* . . . .

*Bandemer* at 2815 n.20 (emphasis added). That is precisely what the court below correctly determined in this case.

### A. The Allegations About the 1982 Interim Plan Fail.

The Republicans' Complaint against A.B. 2X and their Jurisdictional Statement trade on a misleading conflation of the temporary redistricting plan that the California Supreme Court ordered used in 1982 and A.B. 2X, which became a California law and governed the 1984 and 1986 elections. The conflation occurs in various forms. First, there are claims that the complaint alleged "not one, but three sets of elections." Second, there are claims that A.B. 2X "dismantled" Republican incumbencies.

The conflation is readily remedied. There was never a California statute that prescribed congressional districts in 1982. A bill, A.B. 301, was prevented from becoming law by the Republicans' referendum. It never had any independent force; instead, it was used on an interim basis by a unanimous decision of the California Supreme Court. *Assembly v. Deukmejian*, 30 Cal. 3d 638 (1982). The Republicans did not approve of that decision. They petitioned this Court and they lost. *Republican National Committee v. Burton*, 456 U.S. 941 (1982). That should end the argument about the interim plan.

The claim in Paragraphs 9, 20, 21 and 26 of the Complaint that A.B. 2X somehow "dismantled" safe Republican seats in 1982, is incorrect. In the 1982 elections, A.B. 2X did not even exist. Complaint, ¶¶ 11-13. In the two elections held under A.B. 2X (which was and is a law), the *only* incumbent ever adversely affected was *Democrat* Jerry Patterson, who lost in 1984 to conservative *Republican*, Robert Dornan. Juris. Stat. at 8 n.4.

The incumbency claim boils down to a claim that too many Democrats and too few Republicans have been elected in the 1980's. But "too many" needs a point from which to measure. For the Republicans, that point is a particular kind of proportionality.

**B. The Proportionality Allegations Fail.**

The core effect allegation of the Complaint is that the Republicans won a smaller proportion of seats than the proportion of votes cast state-wide for Republican congressional candidates.[15] As the Assembly's brief demonstrates, the Republicans in fact have won seats in almost exact proportion to their share of the official two-party registration. Below, the Republicans insisted that "proportionality is traditionally measured by comparing seats and votes" and that "proportionality is not properly measured by reference to . . . registration data." The Republicans' claim, then, reduces to a protest that they have achieved the "wrong kind" of proportional representation.

As a threshold matter, the putative "tradition" to which the Republicans refer has hardly been established in the case law. In cases dealing with gerrymandering allegations by minorities, seats/votes analysis is almost unknown. In this Court's own precedents, it has looked primarily at the plaintiff group's raw population. In *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752 (1986)

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[15] The Republicans make a point of disavowing proportional representation as a standard. Juris. Stat. at 22. A review of the Complaint makes that disavowal perplexing. The core paragraph of the Complaint alleges "grossly disproportionate election results"and summarizes the effect of A.B.2X as follows:

> A.B.2X carves up the state in such a way as to allocate congressional districts to Democrats in numbers far in excess of Democratic voting strength and to Republicans in numbers far below Republican voting strength.

Complaint, ¶20. The Republicans' summary of *Bandemer* claims that *repeated* disproportionality (caused by district shapes and lack of competition) satisfies the constitutional effect test. Juris. Stat. at 18. If this is true, then the Constitution would require proportionality over the long run. The Republicans certainly appear to be singing what Professor Schuck has called "the siren's song of proportional representation."

this Court stated that "sustained [electoral] success" and "persistent proportional representation is inconsistent" with a statutory vote dilution claim. 106 S.Ct. at 2780. The Court was not referring to seats/votes proportionality, but to representation roughly proportional to *population*. *Id.* at 2779 n.35. The lower courts have often relied on registration data, as well. *See, e.g., Major v. Treen*, 524 F.Supp. 325, 335 (E.D. La. 1983); *Gingles v. Edmisten*, 590 F.Supp. 345, 357, 360 (E.D. N.C. 1984).[16]

Moreover, the seats/votes measure is a peculiarly inappropriate method for assessing elections in the single-member, plurality-winner systems that predominate in the United States. To begin with, it lumps together candidates who barely win with a plurality, and those who win by a heavy margin. It also fails to account for the fact that equipopulous districts often have dramatically different numbers of voters. For example, to win in an inner-city district may take far fewer votes than in an affluent suburban district with higher registration and turnout. In both situations, a single entry in the seats column will be coupled with very different entries in the votes column. Even more unwarranted is the assumption that every vote for every candidate of a given party expresses the same political goals.[17]

The ultimate question, however, is whether the federal courts will have any means to avoid protracted and politically intrusive trials in partisan gerrymandering cases. Where there exists a rough proportion between the

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[16] The defects of the seats/votes measure are manifold. *See, e.g.*, Schuck, *supra* p. 5, at 1325, 1357-61, 1372-77; Lowenstein & Steinberg, *The Quest for Legislative Districting in the Public Interest: Elusive or Illusory*, 33 UCLA L. Rev. 1, 49-64 (1985).

[17] As Professor Nelson Polsby observed below, there is no reason to expect that "the percentage of what [the Republicans] call Republican votes should bear some close proportional relationship to the percentage of Congressional seats won by Republican candidates." Declaration of Nelson W. Polsby, Paragraph 5.

number of plaintiff voters and the number of seats they hold, no claim should be allowed to proceed, unless seats/votes proportional representation is to become a constitutional imperative.[18]

### C. The Allegations About "Competitiveness" Fail.

The Republicans rely heavily on their claim that almost all of California's congressional districts are "uncompetitive" or "safe" for their incumbents, and that the present distribution of seats between the two parties is "virtually immutable." They claim that, under *Bandemer*, the presence of such seats is an indicator of lack of political power, and listed "systematic elimination of political competition" below as an allegation "relevant to discriminatory effect."[19] The district court correctly rejected this competition claim.

First, while the California Republicans would have the Court believe that the pervasive success of incumbents is somehow a special property of California elections, the opposite is in fact the case. Incumbents of both parties were overwhelmingly reelected to the House in 1986, as 98% of those who ran retained their seats. *See*, Schuck,

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[18] For an argument in favor of such a requirement, *see* Note, *The Constitutional Imperative of Proportional Representation*, 94 Yale L.J. 163 (1984). In any case, the alleged deviation from seats/votes proportionally only amounts to three, four or five seats. Given the percentage of statewide votes cast for Republicans in 1982, 1984 and 1986, perfect seat/votes proportionality would yield 22, 22 and 21 seats, respectively. The Republicans actually won 17, 18 and 18 seats in these elections, respectively. These results closely parallel those in the 1974, 1976 and 1978 elections under the Special Masters' plan that the Complaint endorses. Complaint, ¶¶19, 25; *see* Appx. A.

[19] Since there are allegedly safe Republican seats and safe Democratic seats, it is hard to see how the alleged safe seats are discriminatory, unless the Republicans have too few of them. "Too few," of course, needs a benchmark, which unsurprisingly is again proportional representation.

*supra* p. 5, at 1373 n.179. California was only one of 36 states where there was no change in the partisan make-up of the congressional delegation. USA Today, Nov. 6, 1986, §A, at 7.

Second, the competition claim conflicts with the Republicans' insistence that seats and statewide votes should be proportional. It was undisputed below that Republicans won 48% of the two-party vote in 1982, 50% in 1984 and 47% in 1986. The Republicans insist that these state-wide figures are the most reliable way to measure the electorate's partisan wishes. Yet these figures have hardly changed. The Republicans' own theory provides no basis to expect any perceptible swings in the partisan composition of the Congressional delegation.

Third, the competitiveness allegations in *Badham* are only a recapitulation of rejected allegations in *Bandemer*. The record in *Bandemer* was that "the House map was designed to yield 56 'safe' Republican seats and 30 Democratic seats, with the remainder [4 seats] being "tossups." *Bandemer*, 106 S.Ct. at 2834. But this, and every other fact the Democrats proved, was irrelevant to the effects question "as a matter of law." *Id.* at 2810.

Fourth, this Court has already dealt with the "safe seats" problem in *Gaffney v. Cummings*, 412 U.S. 735 (1973). In that case, Democrats complained that the challenged plan was a political gerrymander because it locked in "a built-in bias in favor of the Republican Party." *Id.* at 739. The "bias" was built in by the creation of safe Republican and safe Democratic seats in a proportion based on "results in the preceding three statewide elections." *Id.* at 738. There were 70 safe Democratic seats and 55 to 60 safe Republican seats. *Id.* at 738 n.4. Thus, the plan was an archetypal "bipartisan gerrymander." This Court found no constitutional infirmity.

### D. The Allegations About The Shapes of Districts Fail.

The Republicans complain that the "bizarre and irregular A.B. 2X district configurations" make voters confused about "the identity of their congressmember" and even make "physical access" to representatives more difficult. In addition, the odd shapes are said to make it difficult to attract "effective challengers" and for "Congressmembers to represent a district." Complaint, ¶24.

The Republicans are again relying on the kinds of allegations the Court rejected in *Bandemer*. Indiana Democrats alleged and proved that the challenged districts had "strange" shapes that "conspicuously ignore[d] traditional political subdivisions, with no concern for any adherence to principles of community of interest." *Bandemer*, 106 S.Ct. at 2833. The district court found "the potential for voter disillusion and nonparticipation is great." *Id.* These, like all the facts of *Bandemer*, were irrelevant to the effects threshold.

In *Gaffney v. Cummings*, the Court upheld "indecent" districts that "wiggle[d] and joggle[d]." The Court wrote, "compactness or attractiveness has never been held to constitute an independent federal constitutional requirement. . . ." *Gaffney*, 412 U.S. at 752 n.18.[20] Even as reform proposals, these goals are dubious. "All in all, the compact or homogeneous constituency has severe drawbacks for those who live in it. Certainly, it is not clear that setting a standard of compactness would solve more gerrymandering problems than it would create, or

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[20] This Court found the *Gaffney* districts to be essentially fair. Fair or not, there is no question that the districts were notably irregular in shape. In order to facilitate a comparison of the *Gaffney* and *Badham* districts, copies of the *Gaffney* districts, taken from the Joint Appendix in that case, are included as Appendix B.

at least perpetuate." A. Hacker, *Congressional Districting, The Issue of Equal Representation* 77 (1964). The Republicans do not even allege that only Republicans are forced to reside or run for office in districts with "uncouth" shapes, nor could they. Indeed, the districts whose shapes the Republicans most consistently criticize are districts with Democratic representatives and majorities. No equal protection issue is raised.

## VI.
## CONCLUSION

Indiana was the Democrats' redistricting *cause celebre* for the 1980's. California has been the Republicans'. The same constitutional principles that led this Court to reverse the Democrats' trial court victory in *Davis v. Bandemer* compelled the district court's rejection of the Republicans' mirror-image claims. The Court should accordingly deny jurisdiction for want of a substantial federal question, or alternatively, summarily affirm the judgment of the district court.

Respectfully submitted,

IRELL & MANELLA

JONATHAN H. STEINBERG*
BRUCE A. WESSEL
Attorneys for Appellees
the Members of the
California Democratic
Congressional Delegation

*Counsel of Record

June 24, 1988

## APPENDIX A

## ELECTION DATA FROM *Bandemer*, *Badham* and *Gaffney*

| State | Plaintiffs' % of Seats | Plaintiffs' Aggregate % Votes | Seats/Vote Gap |
|---|---|---|---|
| Indiana (1982) (*Bandemer*-House) | 43 | 52 | 9 |
| California (1974)* (U.S. House) | 35 (15 seats) | 41 | 6 |
| California (1976)* (U.S. House) | 33 (14 seats) | 44 | 11 |
| California (1978)* (U.S. House) | 40 (17 seats) | 48 | 8 |
| California (1980)* (U.S. House) | 49 (21 seats) | 51 | 2 |
| California (1982)** (U.S. House) | 38 (17 seats) | 48 | 10 |
| California (1984)*** (U.S. House) | 40 (18 seats) | 50 | 10 |
| California (1986)*** (U.S. House) | 40 (18 seats) | 47 | 7 |
| Connecticut (1972) (*Gaffney*-House) | 38 | 47 | 9 |

* Under Special Masters' Plan.

** Under Interim Plan.

*** Under A.B. 2X.

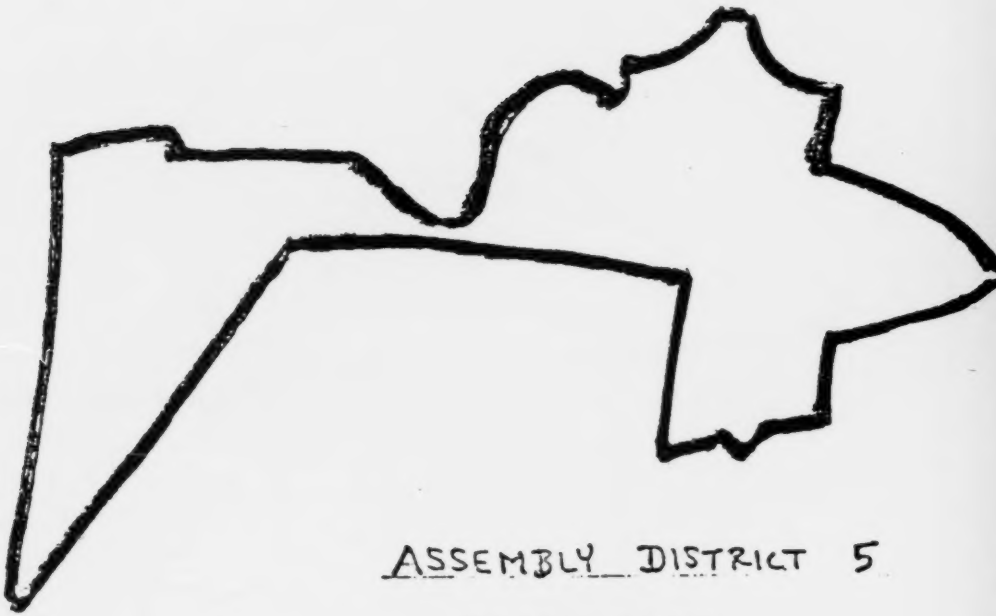
**Sources:**

California aggregate votes data compiled from Official Statement of the Vote, (1974-86), of which judicial notice was taken below.

Connecticut data from Brief for Appellees, *Gaffney v. Cummings*, 412 U.S. 735 (1973) (No. 71-1476) at 36.

Indiana data from *Davis v. Bandemer*, 478 U.S. 109, 106 S.Ct. 2797, 2811 (1986).

# APPENDIX B



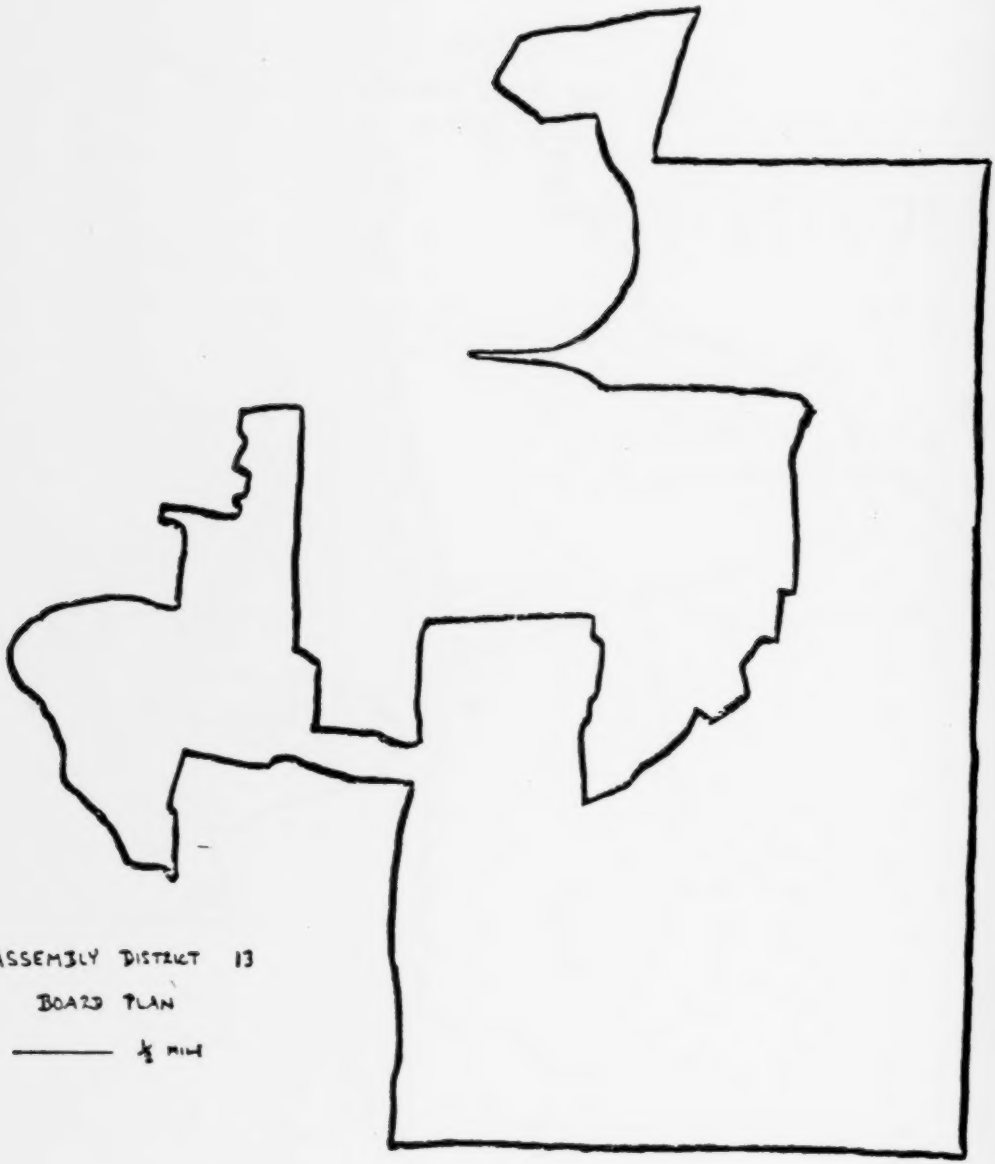

H-5

ASSEMBLY DISTRICT 12

BOARD PLAN

——— ½ MILE

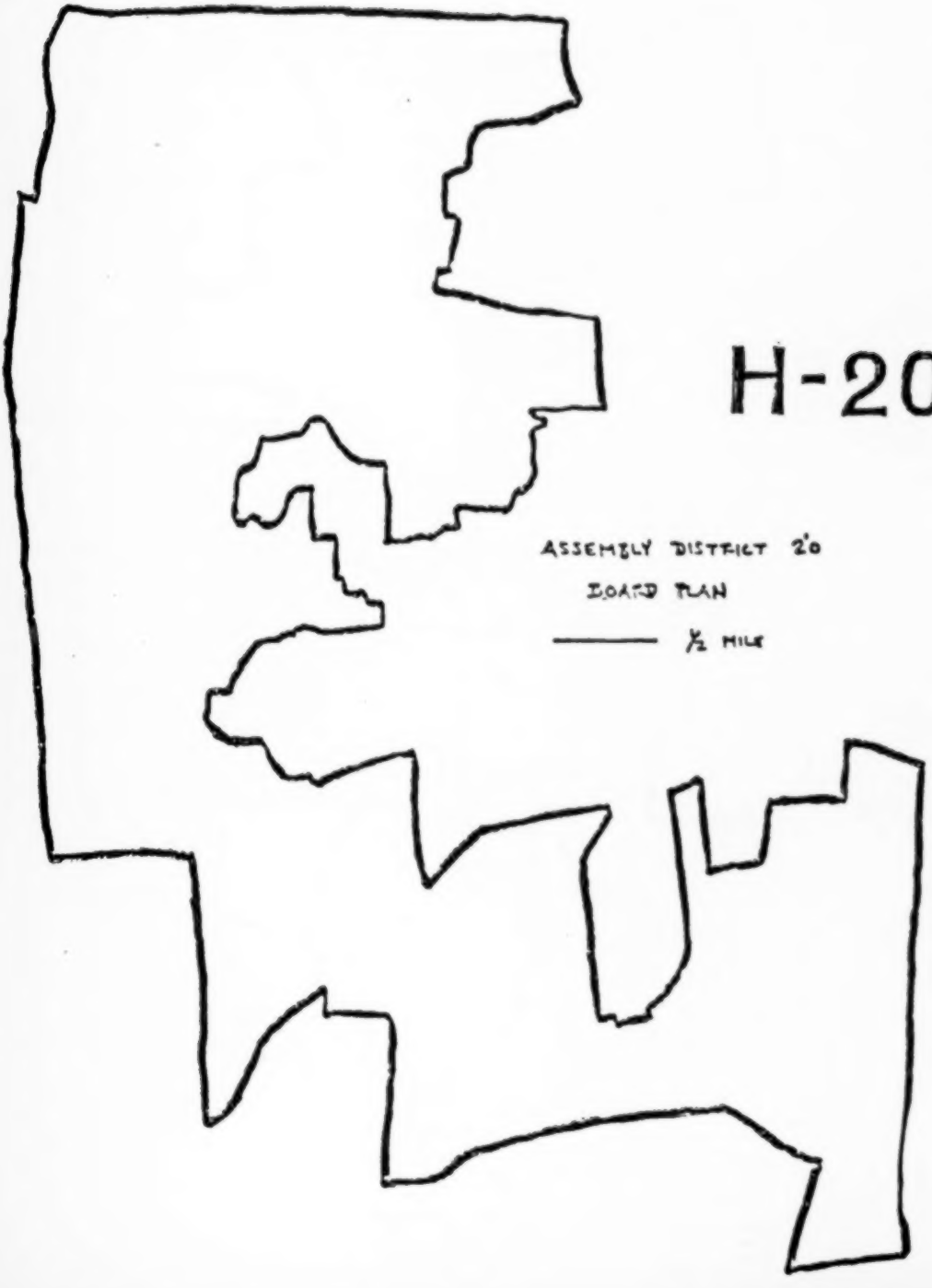
H-12



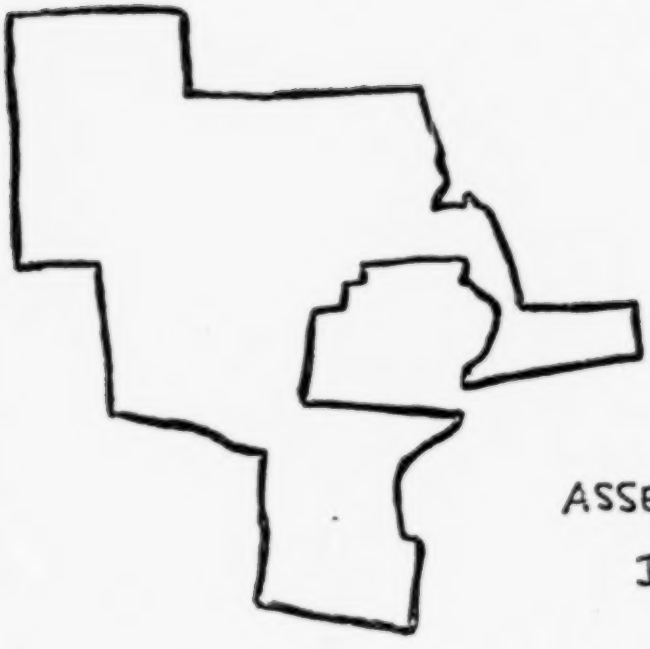

H-13

H-15
ASSEMBLY DISTRICT 15
BOARD PLAN
½ mile

H-19
ASSEMBLY DISTRICT 19
BOARD PLAN
½ MILE


H-20
ASSEMBLY DISTRICT 20
BOARD PLAN
½ MILE

H-41



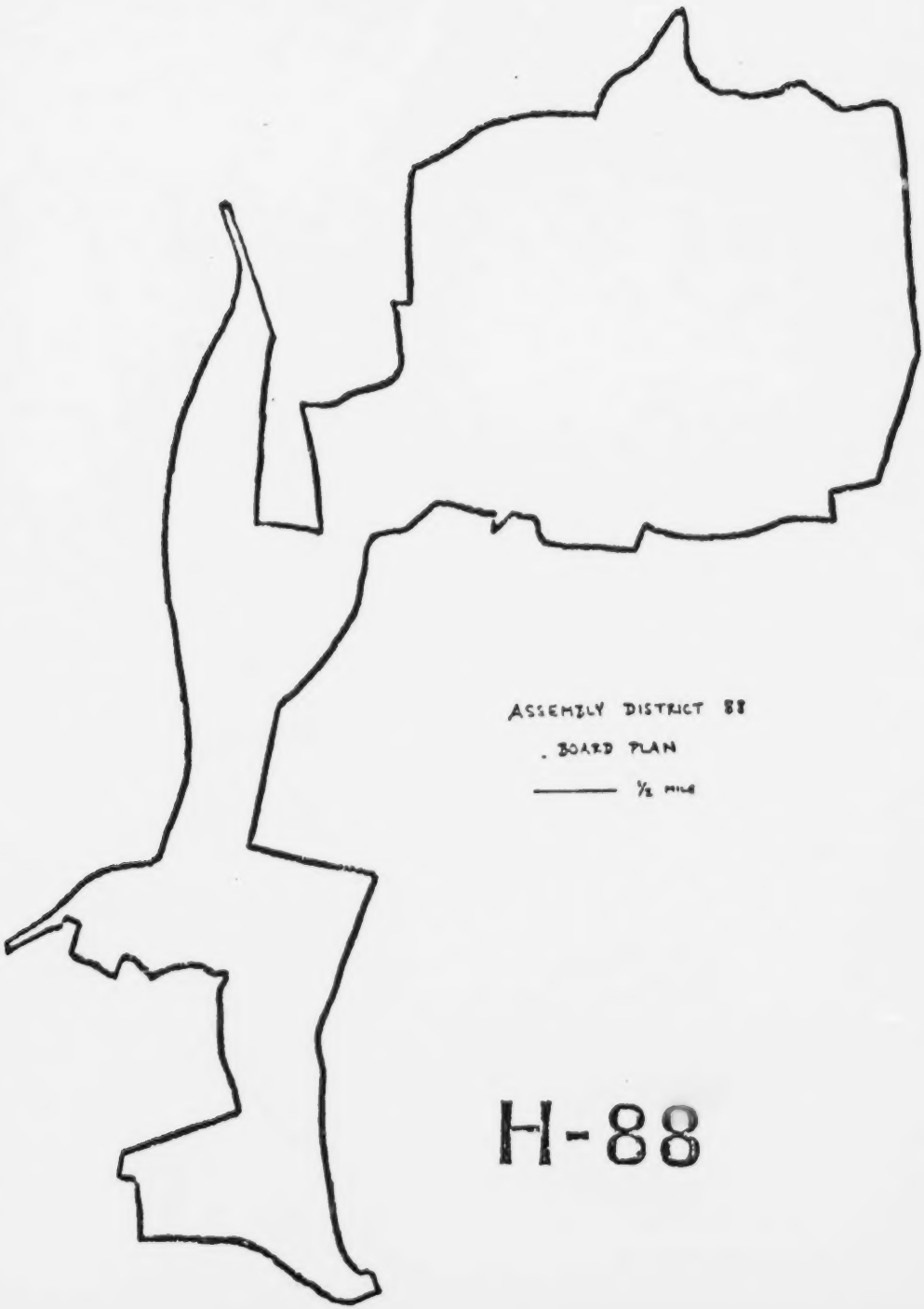
ASSEMBLY DISTRICT 5

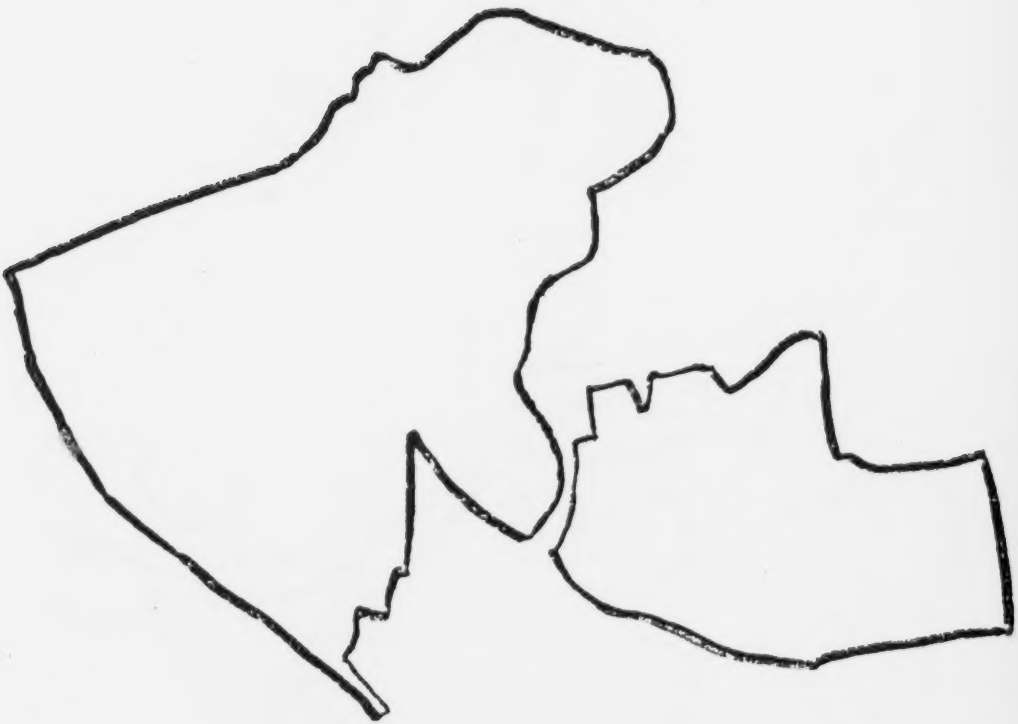
BOARD PLAN

1 5 MILES

H-50

H-85


ASSEMBLY DISTRICT 88
BOARD PLAN
½ mile
H-88



ASSEMBLY DISTRICT 104

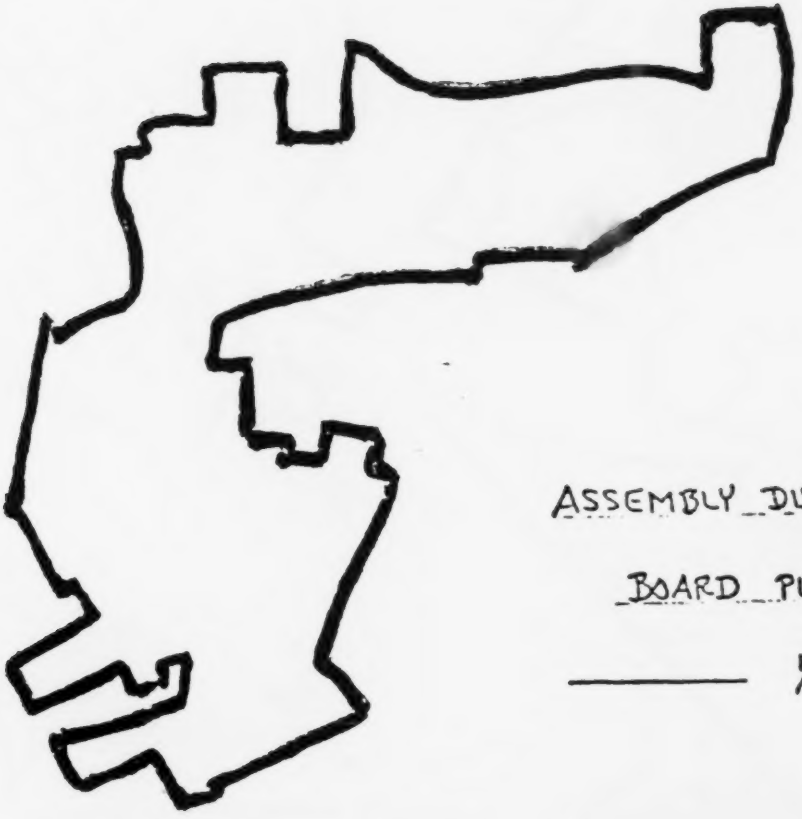
BOARD PLAN

——— ½ MILE

H-104

ASSEMBLY DISTRICT 122
_BOARD PLAN
½ MILE
H-122

H-125
ASSEMBLY DISTRICT 125
BOARD PLAN
½ MILE



ASSEMBLY DISTRICT 127

BOARD PLAN

——— ½ MILE

# H-127

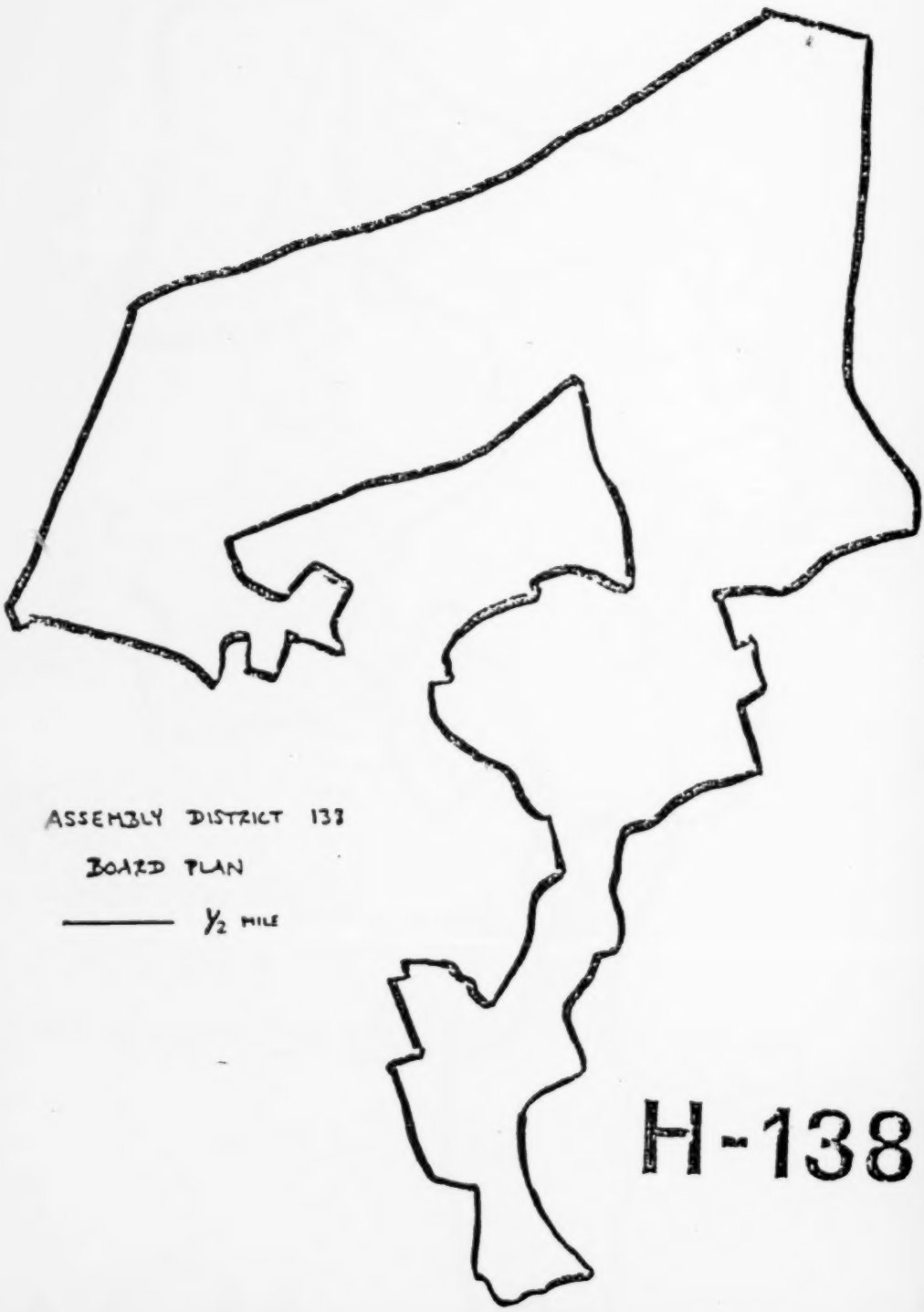
ASSEMBLY DISTRICT 131

BOARD PLAN

——— ½ MILE

H-131

ASSEMBLY DISTRICT 134
H-134

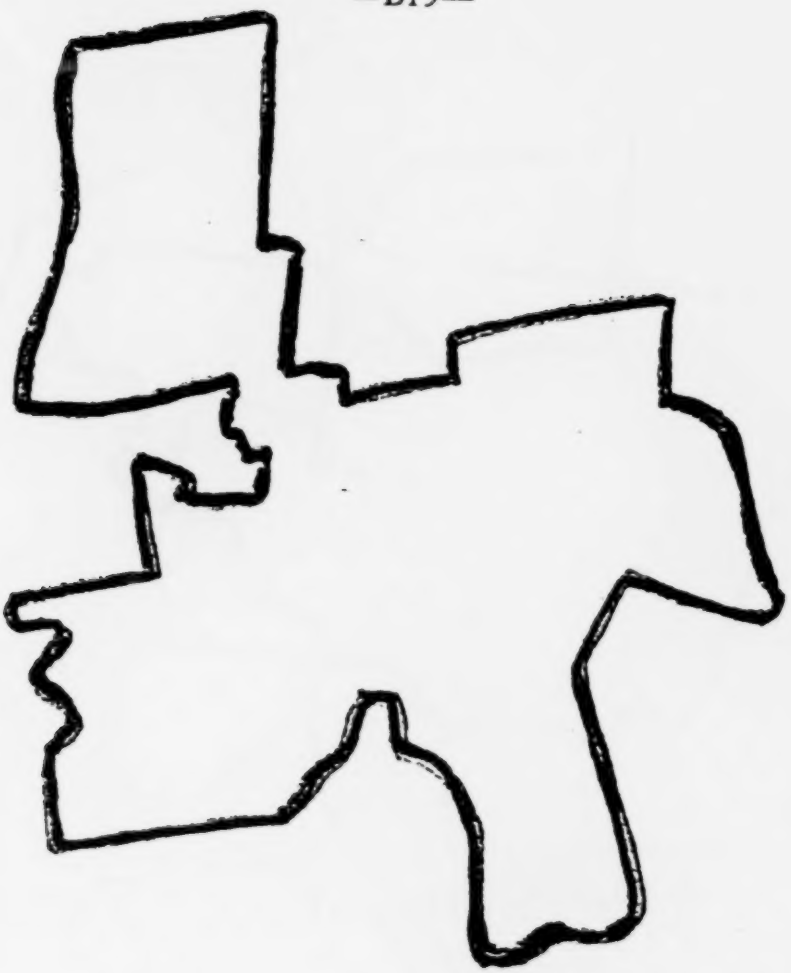

ASSEMBLY DISTRICT 138
BOARD PLAN
½ MILE
H-138

ASSEMBLY DISTRICT 140

BOARD PLAN

½ MILE

H-140



4th SENATORIAL DISTRICT

BOARD PLAN

1 5 MILES

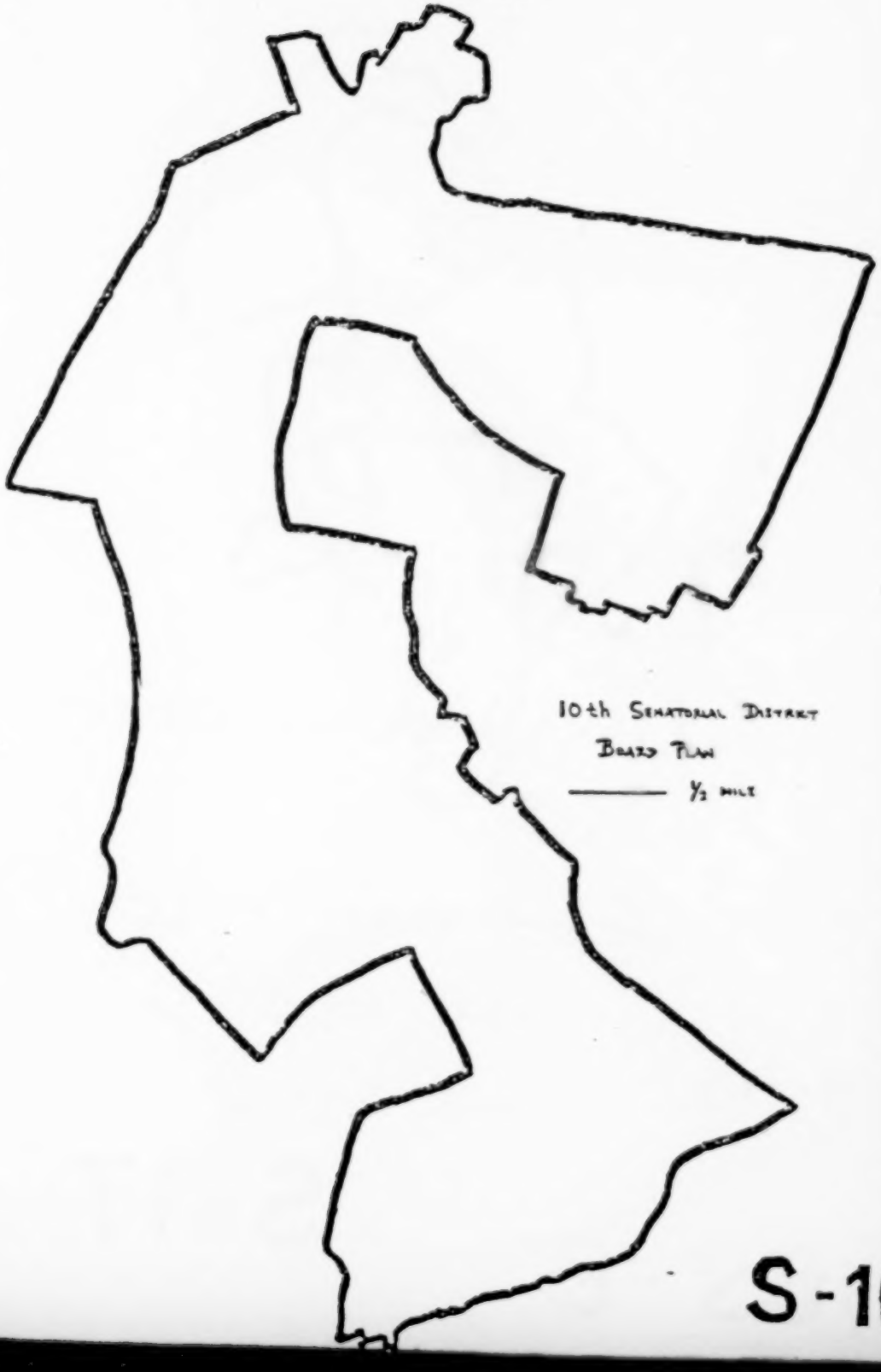
S-4

9th SENATORIAL DISTRICT

BOARD PLAN

1 5 MILES

S-9


10th Senatorial District
Board Plan
½ mile
S-10

17th SENATORIAL DISTRICT

BOARD PLAN

1 5 MILES

S-17

28th SENATORIAL DISTRICT

BOARD PLAN

1 5 MILES

S-28

S-29

32nd SENATORIAL DISTRICT

BOARD PLAN

1 5 MILES

S-32